In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 667

JOHN G. GARNER AND WINNIFRED T. GARNER,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The petition for a writ of certiorari should be denied because it was not timely filed.

The order of the court of appeals dismissing petitioners' appeal was entered on June 17, 1968 (Appendix, *infra*). No petition for rehearing was filed. Therefore, the statutory 90-day period for filing a petition for certiorari expired on September 16, 1968, September 15 being a Sunday. Although petitioners timely sought a 30-day extension, and Mr. Justice Stewart, by order of September 20, 1968, extended the time for filing a petition for a writ of certiorari to and including October 15, 1968, the petition was not received and docketed by this Court until October

324-327—68

19, 1968. The petition is, therefore, out of time and this Court has no jurisdiction to entertain it. 28 U.S.C. 2101(c); Rule 22(3) of the Rules of this Court.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1968.

APPENDIX

United States Court of Appeals for the Sixth Circuit

No. 18621—Filed June 17, 1968

JOHN G. GARNER AND WINNIFRED T. GARNER,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ORDER

Before EDWARDS, CELEBREZZE and PECK, Circuit Judges

Respondent's motion to dismiss is granted in all particulars for the reasons set forth in the memorandum of the Tax Court, except as it pertains to the motion to hold attorney Coxe in contempt. As to that motion, the court on its own motion affirms the disposition of the Tax Court under Rule 8 of the United States Court of Appeals for the Sixth Circuit for the reasons set forth in the memorandum of the Tax Court.

Entered by order of the court.

CARL W. REUSS,
Clerk.

U.S. GOVERNMENT PRINTING OFFICE: 1968